

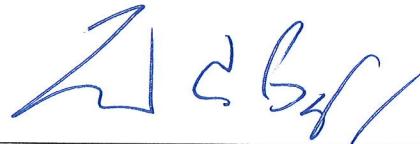
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF NEW MEXICO

STATE OF NEW MEXICO <i>ex rel.</i>)	
State Engineer, <i>et al.</i> ,))
)
Plaintiffs,)	69-cv-07941-KWR-KK
)
v.)	RIO CHAMA ADJUDICATION
)
RAMON ARAGON, <i>et al.</i> ,))
)
Defendants.))

STATE OF NEW MEXICO'S NOTICE OF FILING OF
STATE'S RULE 1-071.3 REPORT

Pursuant to Rule 1-071.3 NMRA, the State of New Mexico, by and through its counsel, hereby submits its report setting out its priorities and allocation of resources for adjudications pending in both state and federal courts. The report is submitted in the form of the attached exhibits, setting out priorities and resources of the Lower Rio Grande Adjudication Bureau in Exhibit A, those of the Pecos Adjudication Bureau in Exhibit B, and those of the Northern New Mexico Adjudication Bureau in Exhibit C.

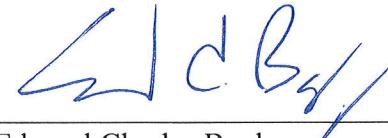
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have caused a copy of the State's Notice of State's Rule 1-071.3 Report to be served by e-mail to all Counsel on the Electronic Service List for U.S. District Court No. 69-cv-07941-KWR/KK on June 30, 2022.



Edward Charles Bagley

STATE OF NEW MEXICO'S RULE 71.3 REPORT – FY 2023
EXHIBIT A: LOWER RIO GRANDE ADJUDICATION BUREAU

June 24, 2022

Pursuant to the requirements of Rule 1-071.3 NMRA, the State of New Mexico presents its report setting out the State's priorities and available resources for the state stream system adjudications in the Lower Rio Grande Adjudication Bureau for fiscal year 2023 (July 1, 2022 to June 30, 2023), which will be filed in each adjudication. The available resources are based upon full time employee ("FTE") time, including staff and contractors, and are listed in Table 1.

This year, the reports break down the level of effort for each adjudication task at a coarser level of detail than in years past. Previously, the reports would break down effort at the level of 0.01 FTE. This year, effort is measured at the level of 0.5 FTE. The reason for this change is that it is not realistic to be able to plan and track effort levels at the previous levels of precision. The level of effort described in this year's reports is a better representation of the amount of resources the State anticipates committing to each adjudication task, recognizing that there is always a significant degree of uncertainty in the amount of effort that these tasks may require.

Because of these changes, the amounts of effort allotted to each adjudication task may not, in the aggregate, add up to the full amount of resources available. In particular, some tasks are allotted 0-0.5 FTE of effort. These are tasks that we anticipate will take only minor levels of effort, to be completed around other, more time-intensive tasks. The designation of 0-0.5 FTE is not intended to convey that 0.5 FTE will be devoted to each of these tasks.

Exhibit A

SUMMARY OF AVAILABLE RESOURCES FOR THE LOWER RIO GRANDE ADJUDICATION BUREAU

	FY2021 FTEs	FY2022 FTEs	FY2023 FTEs
Total Bureau Staff and Contractor Resources	12.86	11.65	9.5¹
A. Lower Rio Grande Adjudication	12.47	11.05	9.0
B. Animas Underground Water Basin Adjudication	0.39	0.60	.5

LOWER RIO GRANDE ADJUDICATION PRIORITIES FOR FY 2023

A. General

1. Litigation of proposed or designated stream system/expedited *inter se* issues
 - a. Steam System Issue 104 (United States' interest in the Rio Grande Project). This stream system issue is currently stayed for continuing settlement discussions related to this and other litigation, looking for a comprehensive negotiated solution to issues raised by this steam system issue, by the lawsuit over the Rio Grande operating agreement, and by Texas v. New Mexico.
 - b. Stream System Issue 107 (status of pre-Rio Grande Project surface water rights). This stream system issue is currently stayed along with, and for the same reason as, Stream System Issue 104. There is one appeal from this stream system issue, arising out of the Court's striking of the purported Notice of Participation by dismissed claimant Scott Boyd. That order was affirmed by the Court of Appeals on June 24, 2021.
 - c. The dismissal of the Pre-1906 Claimants' expedited *inter se* is also on appeal. This case is on the Court of Appeal's General Calendar. Briefing is in progress.
 - d. Toby Romero subfile. The New Mexico Supreme Court granted Toby Romero's petition for writ of certiorari to review the Court of Appeals' affirmation of the adjudication court's adoption of the special master's finding that the railroad water right was partially forfeited. The case is fully briefed, and oral argument occurred in January 2022. The case is awaiting decision from the Court.
 - e. Copper Flat Mine expedited *inter se*. The Court of Appeals upheld the decision of the adjudication court on the Mendenhall issues and the abandonment issues related to the production wells. The Court of Appeals reversed on the abandonment issues related to the miscellaneous wells and remanded to the adjudication court. On remand, the abandonment issues related to the miscellaneous wells were briefed and argued before the adjudication court in June 2022. The case is awaiting decision from the adjudication court.

¹ The decrease in total staff and contractor resources is due to the departure/loss of several employees from these adjudication teams. We are working to fill vacancies to return the FTE count back to historic levels.

Exhibit A

f. Apodaca Cervantes. This subfile concerns a challenge to the State's denial of a claim to a greater FDR than 4.5 acre-feet per acre per year. Mediation failed to resolve it, and the case is on litigation schedule. The State of New Mexico filed a motion for partial summary judgment. The issue relating to the grounds for partial summary judgment has been fully briefed and is awaiting decision from the court.

2. Other non-LRG litigation

Texas v. New Mexico. The LRG Adjudication Bureau legal, support, and technical staff have been and will continue to be involved in support for mediation and trial. Trial began in September 2021, completing the testimony of all fact witnesses. Trial was then continued for mediation. Trial may resume in October 2022.

3. Negotiation with major parties

None now pending other than the negotiations related to the Stream System Issue 104 and Stream System Issue 107 stay.

4. Mediation of other substantive issues

There are several cases involving abandonment issues.

5. Other special procedures and procedural motions in the LRG

- a. Continuing authentication of claims to historical groundwater use for claimants seeking to add groundwater component to their adjudicated and unadjudicated surface water rights, in conjunction with permitting applications to the District IV office.
- b. Implementation of Stream System Issue 108, retroactive determination of EBID surface water amounts and places of use for subfiles entered before the settlement of Stream System Issue 101. The State has adjudicated the first batch of subfiles and is currently publishing notice of the second batch of subfiles.
- c. The State filed a motion on September 21, 2021, to expand the scope of Implied Consent to include instances where all objections are met and where documented verbal consent is not followed by a written stipulation.
- d. A motion to exclude certain smaller surface water livestock impoundments from the adjudication was filed on October 4, 2019.

B. Lower Rio Grande Adjudication, Routine Subfile Processing

1. Routine subfile processing encompasses most of the bureau's everyday work, including updating the Hydrographic Survey, creating new maps to conform to multiple point and polygon requirements, analyzing claims for a larger Farm Deliver Requirement, legal review of proposed offers, service of offers, revised offers or duplicates, reviewing objections, discussions with objecting claimants by survey or legal staff,

Exhibit A

default and implied consent requests, correcting entered orders with typographical errors and re-opening entered orders needing significant correction.

2. The preparatory work for the creation of new subfile offers is focused in the Northern and Southern Mesilla sections, though work actively continues in all sections. The continuing receipt of Hydrographic Survey Change Requests (HSCR) for all sub-basins prevents the hydrographic survey staff from working in one sub-basin exclusively.
3. The status of all sections as of June 16, 2022, is:
 - a. Nutt Hockett: 43 subfiles, 100% served, 100% adjudicated
 - b. Rincon: 1238 subfiles, 97% served, 85% adjudicated
 - c. Northern Mesilla: 5917 subfiles, 61% served, 42% adjudicated
 - d. Southern Mesilla: 5507 subfiles, 62% served, 47% adjudicated
 - e. Outlying Areas: 1363 subfiles, 83% served, 75% adjudicated
4. The building which houses the adjudications and other OSE offices is scheduled for demolition next year. Staff will be relocated to a temporary location while a permanent home is located and prepared. No temporary or permanent home has been determined yet.

ANIMAS UNDERGROUND WATER BASIN ADJUDICATION PRIORITIES FOR FY 2023

1. J & C Victor Trust appealed a decision by Judge Robinson to not reconsider the basin-wide FDR set in a 2012. The appeal has been fully briefed since January 2021, and is awaiting a decision from the Court of Appeals.
2. As of June 16, 2022, there are 188 Animas subfiles, of which 94.15% have been served, and 77.66% have been adjudicated.
3. Besides service of subfiles, the current focus of the adjudication includes resolving subfiles in which the claimant has rejected the proposed judgment offered by the State.

Exhibit A

Table 1: Lower Rio Grande Bureau Resources Allocated

PRIORITY SECTION	ADJUDICATION	Staff Atty	Contract Atty	Staff Para-legal	Survey Staff	Data/IT Staff	Section Totals
Lower Rio Grande Adjudication							
A. General	0-.5	-	0-.5	.5			.5-1.5
B. Rincon	0	-	0	0			0
C. N. Mesilla	1	-	.5	4.5			6
D. S. Mesilla	0-.5	-	0-.5	2			2-3
E. Outlying	0-.5	-	0-.5	0-.5			0-1.5
Category Totals: LRG	1-2.5	-	.5-2	7-7.5			8.5-12
Animas Underground Water Basin Adjudication							
Animas	-	0-.5	-	0-.5			0-1
	-	0-.5	-	0-.5			0-1
CATEGORY TOTALS - ALL SECTIONS	1-2.5	0-.5	.5-2	7-8			8.5-13

STATE OF NEW MEXICO'S RULE 71.3 REPORT

FY 2023 (July 1, 2022 to June 30, 2023)

EXHIBIT B: NORTHERN NEW MEXICO/PECOS ADJUDICATION BUREAU

June 30, 2022

Pursuant to the requirements of Rule 1-071.3 NMRA, the State of New Mexico presents its report setting out the State's proposed priorities and its analysis of resources needed by the Courts and the State in the Northern New Mexico/Pecos Adjudication Bureau for fiscal year 2023 (July 1, 2022 to June 30, 2023). This report will be filed in each of the Bureau's adjudications. The available resources are based upon full time employee ("FTE") time as of the date of this filing, including contractors, and are listed in Table 1.

In addition to those active adjudication lawsuit activities described below, significant additional attorney, paralegal, contractor and technical resources have been or will be committed this fiscal year to implementing completed decrees in the Pecos¹, and in *Aamodt*².

This year, the reports break down the level of effort for each adjudication task at a coarser level of detail than in years past. Previously, the reports would break down effort at the level of 0.01 FTE. This year, effort is measured at the level of 0.5 FTE. The reason for this change is that it is not realistic to be able to plan and track effort levels at the previous levels of precision. The level of effort described in this year's reports is a better representation of the amount of resources the State anticipates committing to each adjudication task, recognizing that there is always a significant degree of uncertainty in the amount of effort that these tasks may require.

¹ Specifically, updating the list of administrable water rights in the Roswell Artesian Basin in the event of a priority call. The Carlsbad Irrigation District called for priority administration in 2021, but rains subsequently obviated the need for the call. The work being performed to update the list of administrable water rights is in anticipation of a future priority call.

² Specifically, the State is tasked with implementing Section 4 protection pursuant to the *Aamodt* Settlement Agreement and the *Aamodt* Final Judgement and Decree.

Exhibit B

Because of these changes, the amounts of effort allotted to each adjudication task may not, in the aggregate, add up to the full amount of resources available. In particular, some tasks are allotted 0-0.5 FTE of effort. These are tasks that we anticipate will take only minor levels of effort, to be completed around other, more time-intensive tasks. The designation of 0-0.5 FTE is not intended to convey that 0.5 FTE will be devoted to each of these tasks.

The other significant change in this year's reports is that they reflect the creation of a new Bureau within the Litigation and Adjudication Program – the Bureau for Tribes, Pueblos, and Nations. This change has allowed the State to better focus resources towards making progress on settling the claims of Tribes, Pueblos, and Nations, and ensuring their successful implementation. Previously, the efforts on these settlements has been reported in the report for the Northern Adjudications. For fiscal year 2023, the Bureau for Tribes, Pueblos and Nations for the first time is contemporaneously filing its own report on priorities and resources.³ For ease of comparison with previous reports, the report for the Bureau for Tribes, Pueblos and Nations has followed the same format as the report for the Northern Adjudications.

³ This transition results in the metrics contained in the one report for FY 22 tracking into two reports for FY 23.

**SUMMARY OF AVAILABLE RESOURCES FOR NORTHERN NEW MEXICO/PECOS
ADJUDICATION BUREAU**

	FY2022 FTEs	FY2023 FTEs
Total Bureau Staff and Contractor Resources	19.60	14.0
State Adjudications:		
I. San Juan Adjudication	4.40	2.5
II. San Jose Adjudication (<i>Kerr-McGee</i>)	.75	-
III. Santa Fe Adjudication (<i>Anaya</i>)	-	-
IV. Pccos Adjudication (<i>Lewis</i>)	6.45	7.5
Federal Adjudications:		
V. Chama Adjudication (<i>Aragon</i>)	3.30	2.0
VI. Taos Adjudication (<i>Abeyta</i>)	2.50	1.5
VII. Zuni Adjudication (<i>A&R</i>)	1.00	0.5
VIII. Santa Cruz/Truchas Adjudication	.35	-
IX. Jemez Adjudication (<i>Abousleman</i>)	.35	-
X. Nambé, Pojoaque, Tesuque Adjudication (<i>Aamodt</i>)	.20	-

STATE COURT ADJUDICATIONS - PRIORITIES FOR FY 2023

I. SAN JUAN ADJUDICATION, New Mexico v. U.S., Jicarilla Apache Tribe and Navajo Nation, Case No. D-1116-CV-75-184 (11th Judicial District, San Juan County)

A. Indian Claims: See Bureau for Tribes, Pueblos and Nations Report.

B. Non-Indian Claims:

1. **Section 1: La Plata**

a. Claims of unknown claimants in the La Plata section: In February of 2018 the State published notice of the pendency of this adjudication lawsuit to all unknown claimants. No additional claims resulted from this, and the State will correspondingly file its motion requesting the Court enter an order granting judgment by default against all unknown claimants finding they have no surface water rights in the La Plata section.

b. Surface water domestic and stock claims in the La Plata section: The State reported in October that six of these claims remained pending. One of those has been resolved by the Court's March 7, 2022 entry of the ten amended NMDOT orders. The other five require field visits and further consultation which the State had hoped to conclude before the end of this year. The State expects to wrap up the surface water domestic and stock proceedings before September.

- c. **Preparation of the addendum to the Partial Final Decree:** The addendum to what will be the proposed Final Decree is currently being proofed. The addendum is the computer-generated summary of the approximately six hundred subfile consent orders entered in the course of these La Plata proceedings, and is being reviewed for consistency with the individual orders and maps, and for omissions and errors, both clerical and substantive.
 - d. **Errors and Omissions:** Clerical-type errors are already being addressed and corrected internally at the Office of the State Engineer. The State will continue to submit associated motions to the Court to correct the substantive errors.
 - e. **Commence *inter se* proceedings on surface water uses:** Following the conclusion of the above described tasks, the State will file a motion for a procedural and scheduling order for *inter se*, and commence to resolve *inter se* objections through litigation or mediation.
2. **City of Aztec, Farmington and Bloomfield:** Continue discussions to reduce the terms of the settlement agreements previously reached with each of the three municipalities to the form of consent orders, and to agree on procedures to submit those proposed consent orders to the Court for entry.

II. SAN JOSE ADJUDICATION, *New Mexico v. Kerr-McGee Corp.*, Case No. CB-83-190-CV & CB-83-220-CV (consolidated) (13th Judicial District, Cibola County):

- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.
- B. **Non-Indian Claims:** *not scheduled for FY 2023*

III. SANTA FE ADJUDICATION, *Anaya v. Public Service Co. of New Mexico*, Case No. 43, 347 (1st Judicial District, Santa Fe County) – *not scheduled for FY2023*

IV. PECOS ADJUDICATION *State of N.M. & PVACD v. Lewis*, Case Nos. 20294 & 22600 (Consolidated),

A. Roswell Underground Water Basin (“RAB”)

- 1. **Scheduling and Procedural Order:** The State has filed its Motion requesting the Court enter a Scheduling and Procedural Order for the adjudication of relation back claims in the RAB. Full briefing of that Motion and entry by the Court is expected before the end of September.
- 2. **Serving Packets:** The State will commence serving packets on claimants shortly after the Scheduling and Procedural Order is entered.
- 3. **Adjudication of Relation Back Claims:** With the service of packets and notification of relation back proceeding to claimants, the State expects to be undertaking subfile

consultations, and entering into consent orders for resolved relation back claims throughout the remainder of the fiscal year.

- 4. Litigate Contested Relation Back Claims:** While the State expects to settle most relation back claims, it further expects the litigation of contested relation back claims to commence during fiscal year 2023.
- 5. Update List of Administrable Water Rights:** Ensure that the list of administrable water rights in the Roswell Artesian Basin is up to date in anticipation of a future priority call.
- B. Carlsbad—Intrepid Potash:** On April 15, 2022, Defendants Intrepid Potash, Inc. and Intrepid Potash—New Mexico, LLC filed their Notice of Appeal of, *inter alia*, the Subfile Order and Partial Final Judgment and Decree adjudicating their water rights. The Docketing Statement was filed on May 17, 2022, and briefing of the appeal is expected to be undertaken during the first half of fiscal year 2023.

C. Upper Pecos—Cow Creek

- 1. Recommencing the Cow Creek Adjudication:** The State has reviewed the Hydrographic Survey and the previous Orders of the Court, and is prepared to recommence the adjudication of the Cow Creek stream system. That said, the fires this Spring encroached on the Cow Creek area, and the State is currently endeavoring to better understand the fire's impacts on the people and the lands in the area. Only to the extent commencing adjudication activities would not be burdensome on them, the State will begin that process in fiscal year 2023.
- 2. Motion for Amended Procedural Order:** In anticipation of commencing adjudication activities, the State has revisited the April 28, 2017 *Amended Procedural Order Governing the Adjudication of Water Right in the Cow Creek Section* to determine whether changed conditions or other factors may warrant changes. We anticipate filing any motion with a proposed revised order early in fiscal year 2023.
- 3. Sending Out Packets:** Conditional entirely on the post-fire situation in Cow Creek, the State anticipates sending adjudication packets pursuant to the Court's Order to claimants in this fiscal year.
- 4. Adjudication of Cow Creek Claims:** With the sending out of packets and notification of the proceeding to claimants, the State expects to be undertaking subfile consultations, and entering into consent orders for resolved water right claims throughout the fiscal year.

D. Gallinas River

- 1. City of Las Vegas Remand Proceeding:** On May 27, 2022 the State filed its Amended Motion for Entry of a Final Order resolving the Las Vegas remand matter. While the Motion was filed as opposed, the other parties had previously indicated their agreement to the actual proposed order, and correspondingly the State does not expect significant activity regarding this matter in fiscal year 2023.

2. **NMDOT and Concluding the Gallinas *Inter Se*:** With regard to closing out the Gallinas *inter se*, 5 NMDOT orders were entered some months ago. During the course of the last month the NMDOT approached the State with sixteen more which may call for further action. Review and possible amendment of these will require attention prior to fully concluding *inter se*.
3. **Updating the Addendum to the Partial Final Decree:** The State is simultaneously updating the addendum to the Partial Final Decree to reflect the changes resulting from *inter se*.
4. **Submitting the Partial Final Decree to the Court:** Once the above tasks are wrapped up, the State will submit the revised addendum and Partial Final Decree to the Court for entry.

FEDERAL COURT ADJUDICATIONS - PRIORITIES FOR FY 2023

V. CHAMA ADJUDICATION, N.M. v. Aragon, Case No. 69cv07941-MV/KK (U.S.D.Ct., N.M.)

A. Indian Claims: See Bureau for Tribes, Pueblos and Nations Report.

B. Non-Indian Claims

1. **Section 1: Rio del Oso:** Complete adjudication of individual subfiles, including potential litigation with the Merced del Pueblo Abiquiu.
2. **Section 3: Rio Cebolla**
 - a. Determine irrigation water requirements (in negotiation with Asociacion de Acequias Nortenas).
 - b. Prepare addendum summarizing surface water irrigation rights and hydrographic survey maps.
 - c. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.
3. **Section 3: Canjilon Creek**
 - a. Determine acequia and private ditch priority dates. One objection remains that will be addressed with a motion for summary judgment.
 - b. Determine irrigation water requirements (in negotiations with Asociacion de Acequias Nortenas).
 - c. Prepare addendum summarizing surface water irrigation rights and hydrographic

survey maps.

- d. Commence *inter se* and move for entry of partial final judgment and decree for surface water irrigation rights.

VI. TAOS ADJUDICATION, *New Mexico v. Abeyta*, Case No. CV-69-7896-MV/WPL & No. CV-7939-MV/WPL (consolidated) (U.S.D.Ct., N.M.)

- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.
- B. **Non-Indian Claims:** Reconcile subfile orders with WRATS and hydrographic survey maps in preparation for *inter se* of surface water rights.

VII. ZUNI ADJUDICATION, *U.S. v. N.M.*, Case No. 07-cv-00681-MV-JHR (U.S.D.Ct, N.M.)

- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.
- B. **Non-Indian Claims,** *U.S. v. N.M. v. A & R Productions*, Case No. 01-cv-00072-MV-JHR (U.S.D.Ct., N.M.)
 1. Complete primary subfile work for three remaining subfiles: Meech Concrete, and two other associated Meech family claims through settlement or litigation.
 2. Consult with U.S. on scheduling *inter se* proceedings for 2023 and development of proposed procedural motion, proposed partial final judgment and decree and addendum.

VIII. SANTA CRUZ/TRUCHAS ADJUDICATION, *New Mexico v. Abbott*, Case No. 68-7488 MV/WPL (*Santa Cruz*) and Case No. 70-8650 MV/WPL (*Truchas*) (N.M. D.Ct., N.M.)

- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.
- B. **Non-Indian Claims:** Work on litigating duty of water will commence in fiscal year 2023, involving some attorney, paralegal and technical resources.

IX. JEMEZ ADJUDICATION, *U.S. v. Abousleman*, Case No. 6:83-cv-01041-MV-JHR (U.S.D.Ct., N.M.)

- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.
 - B. **Non-Indian Claims** – completed 2000 PFJD
- X. NAMBÉ-POJOAQUE-TESUQUE ADJUDICATION**, *New Mexico v. Aamodt*, Case No. 66-cv6639- MV/WPL (U.S.D.Ct, N.M.)—FJD entered 2017 and case closed.
- A. **Indian Claims:** See Bureau for Tribes, Pueblos and Nations Report.

Exhibit B

B. Non-Indian Claims – completed 2017 FJD**STATE OF NEW MEXICO'S RULE 71.3 REPORT****Table 1: Northern New Mexico/Pecos Adjudication Bureau Priority Sections & Resources For Fiscal Year 2023**

PRIORITY SECTION	ADJUDICATION	Staff Atty	Contract Atty	Staff Paralegal	Survey Staff	Technical Contractor	Data/IT Staff	Section Totals
STATE COURT ADJUDICATIONS								
<i>San Juan</i>								
<i>Section 1 (La Plata)</i>	1.0			0.5	0.5			2.0
<i>Municipalities (Aztec, Bloomfield, Farmington)</i>	0.5							0.5
San Juan Subtotals	1.5			.5	0.5			2.5
<i>Pecos</i>								
<i>Roswell Underground Basin (RAB)</i>		1.0		0.5	2.5			4.0
<i>Carlsbad–Intrepid Potash</i>	0.5		0.5					1.0
<i>Upper Pecos—Cow Creek</i>	1.0			0.5	0.5			2.0
<i>Gallinas River</i>	0.5							0.5
Pecos Subtotals	2.0	1.5	1.0	3.0				7.5
FEDERAL COURT ADJUDICATIONS								
<i>Chama (Aragon)—Non-Indian</i>	0.5			0.5	1.0			2.0
<i>Taos (Abeyta)-- Non-Indian</i>	0.5			0.5	0.5			1.5
<i>Zuni (A&R)—Non-Indian</i>	0.5							0.5
CATEGORY TOTALS – ALL SECTIONS	5.0	1.5	2.5	5.0				14.0

STATE OF NEW MEXICO'S RULE 71.3 REPORT

FY 2023 (July 1, 2022 to June 30, 2023)

EXHIBIT C: BUREAU FOR TRIBES, PUEBLOS AND NATIONS

June 24, 2022

During fiscal year 2022, the Office of the State Engineer (“OSE”), Litigation and Adjudication Program (“LAP”) established the Bureau for Tribes, Pueblos, and Nations (“TPN Bureau”). The TPN Bureau is charged with addressing the water rights claims of Tribes, Pueblos, and Nations in pending adjudications through settlement negotiations or litigation, if necessary. The TPN Bureau also assists with implementation issues for executed Settlement Agreements. For fiscal year 2023, the TPN Bureau is contemporaneously filing its own report on priorities and resources.¹ In the past, the efforts were reported in the Northern New Mexico Adjudication Bureau report.

Currently, the TPN Bureau has a staff of three attorneys and anticipates hiring a staff member in July 2022. The TPN Bureau is assessing its needs to determine if the position should be an attorney, a technical person, or a paralegal. Currently, the TPN Bureau relies upon paralegal staff that work for the Northern New Mexico and Pecos Adjudications Bureau and on staff in the Hydrographic Survey Bureau. There are a handful of contract attorneys and technical consultants working for the TPN Bureau. The time for these categories of employees are reflected in this report.

The OSE’s Tribal Liaison plays a key role in all aspects of communications with the Tribes, Pueblos, and Nations and is directly involved in the activities of the TPN Bureau. The Tribal Liaison’s time is not reflected in this report. The TPN Bureau consults with the Hydrology Bureau (OSE Water Resources Allocation Program), and with staff of the Interstate Stream Commission. Their assistance is an integral part of negotiations. The time of these staff members are not reflected here.

¹ This transition results in the metrics contained in the one report for FY 22 tracking into two reports for FY 23.

Exhibit C

This year, the report breaks down the level of effort for each adjudication task at a coarser level of detail than in years past. Previously, the reports would break down effort at the level of 0.05 FTE. This year, effort is measured at the level of 0.5 FTE. The reason for this change is that it is not realistic to be able to plan and track effort levels at the previous levels of precision. The level of effort described in this year's reports is a better representation of the amount of resources the State anticipates committing to each adjudication task, recognizing that there is always a significant degree of uncertainty in the amount of effort that these tasks may require.

Because of these changes, the amounts of effort allotted to each adjudication task may not, in the aggregate, add up to the full amount of resources available. In particular, some tasks are allotted 0-0.5 FTE of effort. These are tasks that we anticipate will take only minor levels of effort, to be completed around other, more time-intensive tasks. The designation of 0-0.5 FTE is not intended to convey that 0.5 FTE will be devoted to each of these tasks.

Exhibit C

**SUMMARY OF AVAILABLE RESOURCES FOR THE BUREAU FOR TRIBES,
PUEBLOS AND NATIONS RELATED TO ADJUDICATIONS**

	FY2023 FTEs
Total Bureau Staff and Contractor Resources	8
State Adjudications:	
I. San Juan Adjudication <ul style="list-style-type: none"> • Navajo Nation Settlement Agreement – Implementation • Ute Mountain Ute Tribe – In Negotiation 	1 to 2
II. San Jose Adjudication (<i>Kerr-McGee</i>) <ul style="list-style-type: none"> • Pueblos of Acoma, Laguna, and Navajo Nation – Seeking Federal Legislation 	.5 to 2
III. Santa Fe Adjudication (<i>Anaya</i>) – N/A	-
IV. Pecos Adjudication (<i>Lewis</i>) – N/A	-
Federal Adjudications:	
V. Chama Adjudication (<i>Aragon</i>) and Santa Cruz/Truchas Adjudication (<i>Abbott</i>) <ul style="list-style-type: none"> • Ohkay Owingeh – In Negotiation 	2 to 3.5
VI. Taos Adjudication (<i>Abeyta</i>) <ul style="list-style-type: none"> • Taos Pueblo Settlement Agreement - Implementation 	.5 to 1
VII. Zuni Adjudication (<i>A&R</i>) <ul style="list-style-type: none"> • Zuni Pueblo – In Negotiation 	1.5 to 2
VIII. Santa Cruz/Truchas Adjudication (<i>Abbott</i>) - <i>see Chama above</i> <ul style="list-style-type: none"> • Santa Clara Pueblo and Ohkay Owingeh – In Negotiation 	.5 to 1.5
IX. Jemez Adjudication (<i>Abousleman</i>) <ul style="list-style-type: none"> • Pueblos of Zia and Jemez – Seeking Federal Legislation • Pueblo of Santa Ana – In Litigation 	1 to 1.5
X. Nambé, Pojoaque, Tesuque Adjudication (<i>Aamodt</i>) <ul style="list-style-type: none"> • Pueblos of Nambé, Pojoaque, Tesuque, San Ildefonso – Implementation 	-
Other Tribes, Pueblos & Nations:	
XI. Six Middle Rio Grande Pueblos <ul style="list-style-type: none"> • Pueblos of Sandia, Isleta, Cochiti, Santa Domingo, San Felipe, and Santa Ana – Federal Assessment Team newly appointed 	1 to 2

STAFF RESOURCES AVAILABLE TO BUREAU FOR TRIBES, PUEBLOS, AND NATIONS	Staff Atty	Contract Atty	Staff Para- legal	Survey Staff	Technical Contractor	Section Totals
FULL TIME EMPLOYEE ALLOCATION	3.5	1.5	0 to .5	2	0 to .5	8

STATE COURT ADJUDICATIONS - PRIORITIES FOR FY 2023

- I. **SAN JUAN ADJUDICATION**, *New Mexico v. U.S., Jicarilla Apache Tribe and Navajo Nation, Case No. D-1116-CV-75-184 (11th Judicial District, San Juan County)*
 - A. **Navajo Nation Settlement Agreement**: Consult and assist with settlement agreement implementation issues.
 - B. **Ute Mountain Ute Tribe**: Continue negotiations to reach settlement of the Tribe's pending claims.
- II. **SAN JOSE ADJUDICATION**, *New Mexico v. Kerr-McGee Corp., Case No. CB-83-190-CV & CB-83-220-CV (consolidated) (13th Judicial District, Cibola County)*
 - A. **Pueblos of Acoma and Laguna**: The parties (other than the United States) signed a settlement agreement in June 2022. The State will assist in seeking federal approval and funding through Congress and the Department of the Interior. Once accomplished, the State will be involved in conforming the Settlement Agreement to the federal legislation and seeking State legislative approval.
 - B. **Navajo Nation**: The parties are completing negotiations to reach a signed Settlement Agreement that will merge with the process detailed above for the Pueblos of Acoma and Laguna.
- III. **SANTA FE ADJUDICATION**, *Anaya v. Public Service Co. of New Mexico*, Case No. 43,347 (1st Judicial District, Santa Fe County) – *There are no Tribes, Pueblos or Nations with active claims in this adjudication.*
- IV. **PECOS ADJUDICATION**, *State of N.M. & PVACD v. Lewis*, Case Nos. 20294 & 22600 (Consolidated) – *There are no pending claims of a Tribe, Pueblo, or Nation in this adjudication.*

FEDERAL COURT ADJUDICATIONS - PRIORITIES FOR FY 2023

- V. **CHAMA ADJUDICATION**, *N.M. v. Aragon*, Case No. 69cv07941-MV/KK (U.S.D.Ct., N.M.)
 - A. **Ohkay Owingeh**: Continue negotiations to reach settlement of the Pueblo's pending claims. These claims are being negotiated along with Ohkay Owingeh's claims in the Santa Cruz/Truchas adjudication.
- VI. **TAOS ADJUDICATION**, *New Mexico v. Abeyta*, Case No. CV-69-7896-MV/WPL & No. CV-7939-MV/WPL (consolidated) (U.S.D.Ct., N.M.)
 - A. **Taos Pueblo Settlement Agreement**: Consult and assist with settlement agreement implementation issues.

Exhibit C

VII. **ZUNI ADJUDICATION**, *U.S. v. N.M.*, Case No. 07-cv-00681-MV-JHR (U.S.D.Ct, N.M.)

- A. **Zuni Tribe:** Continue negotiations to reach settlement of the Tribe's pending claims.
- B. **Navajo Nation (Ramah Chapter):** Begin negotiations to reach settlement of the Tribe's claims.

VIII. **SANTA CRUZ/TRUCHAS ADJUDICATION**, *New Mexico v. Abbott*, Case No. 68-7488 MV/WPL (Santa Cruz) and Case No. 70-8650 MV/WPL (Truchas) (N.M. D.Ct., N.M.)

- A. **Ohkay Owingeh and Pueblo of Santa Clara:** Continue negotiations to reach settlement of the Tribe's claims. These claims are being negotiated along with the claims in the Chama adjudication.

IX. **JEMEZ ADJUDICATION**, *U.S. v. Abousleman*, Case No. 6:83-cv-01041-MV-JHR (U.S.D.Ct., N.M.)

- A. **Pueblos of Zia and Jemez:** The parties (other than the United States) signed a settlement agreement in June 2022. The State will assist in seeking federal approval and funding through Congress and the Department of the Interior. Once accomplished, the State will be involved in conforming the Settlement Agreement to the federal legislation and seeking State legislative approval.
- B. **Pueblo of Santa Ana:** The parties are returning to litigation after a stay.

X. **NAMBÉ-POJOAQUE-TESUQUE ADJUDICATION**, *New Mexico v. Aamodt*, Case No. 66-cv-6639- MV/WPL (U.S.D.Ct, N.M.) - FJD entered 2017 and case closed.

- A. **Pueblos of Nambe, Pojoaque, Tesuque and San Ildefonso Settlement Agreement:** Consult and assist with settlement agreement implementation issues, including beginning assessment of lands under Section 4 of the Settlement Agreement.

OTHER TRIBES, PUEBLOS, AND NATIONS - PRIORITIES FOR FY 2023

XI. SIX MIDDLE RIO GRANDE PUEBLOS

- A. **Pueblos of Sandia, Isleta, Cochiti, Santa Domingo, San Felipe, and Santa Ana:** The Secretary of the Interior's Indian Water Rights Office recently appointed a federal assessment team to consult with the six Middle Rio Grande Pueblos to determine the scope of their water right claims. The State will begin negotiations with the Pueblos and federal team this year. There is no pending adjudication for these claims.